

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92651; File No. SR-NYSEArca-2021-28)

August 12, 2021

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of ConvexityShares Daily 1.5x SPIKES Futures ETF under NYSE Arca Rule 8.200-E (Trust Issued Receipts)

I. Introduction

On May 13, 2021, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the ConvexityShares Daily 1.5x SPIKES Futures ETF (“Fund”), a series of the ConvexityShares Trust (“Trust”), under NYSE Arca Rule 8.200-E, Commentary .02 (“Trust Issued Receipts”). The proposed rule change was published for comment in the Federal Register on May 26, 2021.<sup>3</sup> On July 2, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On July 26, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 91949 (May 20, 2021), 86 FR 28420.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 92320, 86 FR 36309 (July 9, 2021). The Commission designated August 24, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

the proposed rule change as originally filed.<sup>6</sup> The Commission has received no comments on the proposed rule change. The Commission is publishing this notice and order to solicit comments on Amendment No. 1 from interested persons, and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

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<sup>6</sup> In Amendment No. 1, the Exchange: (i) stated that Teucrium Trading, LLC will be the Sub-Adviser for the Fund; (ii) represented that neither the Sponsor nor the Sub-Adviser (as such terms are defined below) is registered as a broker-dealer or affiliated with a broker-dealer and made additional representations with respect to firewalls; (iii) stated that the Sponsor or Sub-Adviser determines the type, quantity and mix of investments that the Sponsor or Sub-Adviser believes, in combination, should provide daily leveraged exposure to the Index (as defined below) to seek investment results equal to one-and-a-half times the performance of the Index; (iv) stated that the Sponsor or Sub-Adviser may cause the Fund to invest in VIX Related Positions (as defined below) if the market for a specific futures contract experiences emergencies or disruptions or in situations where the Sponsor or Sub-Adviser deems it impractical or inadvisable to buy or sell SPIKES futures contracts; (v) represented that (a) the Fund will attempt to limit counterparty risk in uncleared swap agreements by entering into such agreements only with counterparties the Sponsor and Sub-Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty and (b) the Sponsor and Sub-Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis; (vi) stated that, with respect to halting trading in the Shares, the Exchange may consider (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; (vii) represented that information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services; and (viii) made technical, clarifying, and conforming changes. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2021-28/srnysearca202128-9090695-246773.pdf>.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1<sup>8</sup>

The Exchange proposes to list and trade Shares of the Fund<sup>9</sup> under NYSE Arca Rule 8.200-E, Commentary .02 which governs the listing and trading of Trust Issued Receipts<sup>10</sup> on the Exchange. The Fund will be managed and controlled by ConvexityShares, LLC (“Sponsor”), a commodity pool operator.<sup>11</sup> Teucrium Trading, LLC, a commodity trading adviser registered with the Commodity Futures Trading Commission, will be the Sub-Adviser for the Fund (“Sub-Adviser”) and will manage the Fund’s commodity futures investment strategy.<sup>12</sup> U.S. Bank will

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<sup>8</sup> Additional information regarding the Fund, the Trust, and the Shares, including investment strategies, creation and redemption procedures, and portfolio holdings can be found in Amendment No. 1, supra note 6.

<sup>9</sup> On December 15, 2020, the Trust submitted to the Commission its draft registration statement on Form S-1 (“Registration Statement”) under the Securities Act of 1933 on a confidential basis. The Registration Statement for the Fund is not yet effective and the Exchange will not commence trading in Shares of the Fund until the Registration Statement becomes effective.

<sup>10</sup> Commentary .02 to NYSE Arca Rule 8.200-E applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200-E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

<sup>11</sup> The Sponsor is not registered as a broker-dealer or affiliated with a broker-dealer. In the event (a) the Sponsor becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new sponsor becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel of the broker-dealer or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

<sup>12</sup> The Sub-Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. In the event (a) the Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel of the broker-dealer or broker-dealer affiliate, as applicable, regarding access to information concerning the composition

provide custody and fund accounting to the Trust and the Fund; U.S. Bancorp Fund Services will be the transfer agent for the Shares and administrator for the Fund; and Foreside will serve as the distributor for the Fund.

The Fund will seek daily investment results, before fees and expenses, that correspond to one-and-a-half times (1.5x) the performance of its benchmark index for a single day.<sup>13</sup> The Fund is benchmarked to the T3 SPIKE Front 2 Futures Index (“Index”), an investable index of SPIKES futures contracts.<sup>14</sup> The Index is intended to reflect the returns that are potentially available through an unleveraged investment in a theoretical portfolio of first- and second-month futures contracts on the SPIKES Volatility Index (“SPIKES Index”).<sup>15</sup>

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and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

<sup>13</sup> A “single day” is measured from the time the Fund calculates its net asset value (“NAV”) to the time of the Fund’s next NAV calculation. The NAV calculation time for the Fund is typically 4:00 p.m. (Eastern Time).

<sup>14</sup> The Index is sponsored by Triple Three Partners Pty Ltd, which licenses the use of the Index to its affiliated company, T3i Pty Ltd (Triple Three Partners Pty Ltd and T3i Pty Ltd. are collectively referred to herein as “T3 Index” or “Index Sponsor”). The Index Sponsor is affiliated with the Sponsor. The Index Sponsor has implemented and will maintain a fire wall regarding access to information concerning the composition of and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index. The Index Sponsor is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealers. The Index is calculated and published by Solactive AG, which is not affiliated with T3 Index.

<sup>15</sup> The Exchange states that the SPIKES Index is a non-investable index that measures the implied volatility of the SPDR S&P 500 ETF Trust (“SPY”) over 30 days in the future. SPY is a unit investment trust that holds a portfolio of common stocks that closely tracks the price performance and dividend yield of the S&P 500 Composite Price Index (“S&P 500”). The SPIKES Index does not represent the actual or the realized volatility of SPY. The SPIKES Index is calculated based on the prices of a constantly changing portfolio of SPY put and call options. The SPIKES Index is reflective of the premium paid by investors for certain options linked to the level of the S&P 500. The SPIKES Index is a theoretical calculation and cannot be traded on a spot basis. T3 Index is the owner, creator and licensor of the SPIKES Index. The SPIKES Index is calculated, maintained

The Index is comprised solely of SPIKES futures contracts.<sup>16</sup> The Index employs rules for selecting the SPIKES futures contracts comprising the Index and a formula to calculate a level for the Index from the prices of these SPIKES futures contracts. Currently, the SPIKES futures contracts comprising the Index represent the prices of two near-term SPIKES futures contracts, replicating a position that rolls the nearest month SPIKES futures contracts to the next month SPIKES futures contracts at or close to the daily settlement price via a Trade-At-Settlement<sup>17</sup> program towards the end of each business day in equal fractional amounts. This results in a constant weighted average maturity of one month.

The Fund will invest primarily in SPIKES futures contracts to gain the appropriate exposure to the Index. Under certain circumstances (described below), the Fund may also invest in futures contracts and swap contracts (“VIX Related Positions”) on the Cboe Volatility Index (“VIX”).<sup>18</sup> The Exchange states that the VIX is an index that tracks volatility and would be expected to perform in a substantially similar manner as the SPIKES Index.

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and published by Miami International Securities Exchange, LLC via the Options Price Reporting Authority.

<sup>16</sup> According to the Exchange, SPIKES futures contracts were launched for trading by the Minneapolis Grain Exchange, LLC (“MGEX”) on December 14, 2020. While the SPIKES Index represents a measure of the expected 30-day volatility of SPY, the prices of SPIKES futures contracts are based on the current expectation of the expected 30-day volatility of SPY on the expiration date of the futures contract.

<sup>17</sup> According to the Exchange, a Trade at Settlement (“TAS”) transaction is a transaction at a price equal to the daily settlement price, or at a specified differential above or below the daily settlement price. The TAS transaction price will be determined following execution and based upon the daily settlement price of the respective SPIKES futures contracts month. The permissible price range for permitted TAS transactions is from 0.50 index points below the daily settlement price to 0.50 index points above the daily settlement price. The permissible minimum increment for a TAS transaction is 0.01 index points. See MGEX Rule 83.15 at <http://www.mgex.com/documents/20210318-Rulebook.pdf>.

<sup>18</sup> According to the Exchange, the VIX is a measure of estimated near-term future volatility based upon the weighted average of the implied volatilities of near-term put and call options on the S&P 500.

The Fund seeks to achieve its investment objective through the appropriate amount of exposure to the SPIKES futures contracts included in the Index. The Fund will not directly invest in the SPIKES Index. The Sponsor or Sub-Adviser determines the type, quantity and mix of investments that the Sponsor or Sub-Adviser believes, in combination, should provide daily leveraged exposure to the Index to seek investment results equal to one-and-a-half times the performance of the Index. In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to SPIKES futures contracts, or if the market for a specific futures contract experiences emergencies (e.g., natural disaster, terrorist attack or an act of God) or disruptions (e.g., a trading halt or a flash crash), or in situations where the Sponsor or Sub-Adviser deems it impractical or inadvisable to buy or sell SPIKES futures contracts (such as during periods of market volatility or illiquidity, or when trading in SPY is halted), the Sponsor or Sub-Adviser may cause the Fund to invest in VIX Related Positions. The Sponsor expects the Fund's positions in VIX Related Positions to consist primarily of VIX futures contracts, which are traded on the Cboe Futures Exchange. However, in the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to VIX futures contracts, or if the market for a specific VIX futures contract experiences emergencies or disruptions or in situations where the Sponsor or Sub-Adviser deems it impractical or inadvisable to buy or sell VIX futures contracts, the Fund would hold VIX swap agreements.<sup>19</sup> The Fund will also hold cash or cash equivalents such as U.S. Treasury securities

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<sup>19</sup> The Fund will attempt to limit counterparty risk in uncleared swap agreements by entering into such agreements only with counterparties the Sponsor and Sub-Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty. The Exchange represents that the Sponsor and Sub-Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds) as collateral for investments and pending investments.

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2021-28, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>20</sup> to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>21</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."<sup>22</sup>

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."<sup>23</sup> The description of a proposed rule change,

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<sup>20</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>21</sup> Id.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 17 CFR 201.700(b)(3).

its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>24</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>25</sup>

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act.

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>26</sup>

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<sup>24</sup> See id.

<sup>25</sup> See id.

<sup>26</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Amendment No. 1, in addition to any other comments they may wish to submit about the proposed rule change. In this regard, the Commission seeks commenters' views regarding whether the Exchange's proposal to list and trade the Shares, which seek to provide daily investment results that correspond to one-and-a-half times the return of an index designed to measure the daily performance of a theoretical portfolio of first- and second-month SPIKES futures contracts, is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2021-28 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2021-28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NYSEArca-2021-28 and should be submitted by [insert date 21 days from publication in the Federal Register].

Rebuttal comments should be submitted by [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(57).